

STATEMENT OF SENATOR CHRISTOPHER J. DODD
COMMITTEE ON RULES & ADMINISTRATION
HEARING ON VOTER VERIFICATION IN FEDERAL ELECTIONS
JUNE 21, 2005

Mr. Chairman: I appreciate your calling this hearing today to allow the Committee to receive testimony about methods of providing for voter verification of ballots in federal elections. I also appreciate the opportunity this morning to listen to some very important witnesses and to colleagues who have introduced legislation on voter verification. The issue of voter verification has provoked some controversy across the country as to how you can verify your vote before it is cast.

I do not have any inherent objection at all to paper audits. My concern from the very outset in the drafting of election reform legislation has been that there are millions of people in this country who are disabled—visually disabled, manually disabled, among other forms of disability. Some bills that are currently being considered exclude the ability of the disabled to vote privately and independently, at least it is perceived this way. For these millions of Americans who have never been able to vote privately and independently, for the first time under HAVA, we guarantee that right. In the very first part of the bill, we guarantee that right.

We say in HAVA that every voter must have the right to verify their ballot before the ballot is cast, and I will read the specific line in a few minutes. But all the legislation or most of it that has been introduced excludes the ability of the disabled to have that same right. By insisting on paper, we are denying people who cannot read because they cannot see, or for reasons otherwise cannot manually operate the system a chance to verify what they have done. And I will just tell you here, I will vehemently oppose any legislation that excludes the ability of individuals with disabilities to have the right to do the same thing that those who can see and are manually dexterous have.

So to me, this need not be a battle. We made this a battle that need not exist, because I do not believe any of my colleagues—I do not want to believe—are going to endorse or support a piece of legislation that would disenfranchise disabled voters. After the Americans with Disabilities Act, anyone who arrived in this building here this morning, took an elevator—unless you walked up the stairs—to get to the third floor, and you could not see and you pushed a button, you would know that there is braille on that elevator. We require it under the law.

There are curb cutouts that make it possible for people who cannot walk to get on the sidewalk. Do you think we are going to pass legislation to allow people to vote and not give them the opportunity to do so privately and independently? It is not going to happen, in my view. So my concern is whether or not we are going to make it possible. With all the talk about paper, I am fine; but the problem is that I want to also guarantee that those Americans who cannot see and cannot operate those machines are going to have the same opportunity to verify their ballots.

As the Senate author of the Help America Vote Act, my position in support of voter verified ballots has been indisputable from the time I introduced comprehensive election reform legislation in 2001. That legislation, S. 565, we called it then the Equal Protection of Voting Rights Act of 2001, passed the Senate by a vote of 99 to 1. After conference with the House, that bill became the Help America Vote Act of 2002, or HAVA, as we call it..

This legislation that I authored required, for the first time in our nation's history, that all voting systems used in federal elections meet certain requirements. The very first requirement of my bill, S.565, was, and I will quote it here:

“ the voting system shall permit the voter to verify the votes selected by the voter on a ballot before the ballot is cast and tabulated, and shall provide the voter with the opportunity to correct any error before the ballot is cast and tabulated.”

And that requirement is now the law of the land. As enacted in HAVA, the states must comply with that requirement by January 1 of next year.

So I will take a backseat to absolutely no one when it comes to support of voter verified ballots.

Moreover, HAVA requires that every voting system that is used in a federal election produce a permanent paper record with a manual audit capacity for that system. That is the law.

But what HAVA did not require was a one-size-fits all solution as to how voter verification of the ballot was reduced to a permanent paper record. Quite frankly, that is a technology issue that Congress, in my view, is ill-equipped to decide.

As with most implementation decisions under HAVA, the specifics of how these requirements were to be achieved was left to the states to determine with guidance from the Election Assistance Commission and the National Institute on Standards and Technology (NIST).

The Commission is charged with developing voluntary guidelines for implementing the HAVA requirements and for establishing certification of voting systems. The Commission is expected to issue the voting system guidelines for public comment literally any day.

So I take great offense at any suggestion that I oppose either a voter verified ballot or a paper record of such ballot. But let me make clear my position: I not only disdain, but categorically reject, any voting system, including one that requires a voter verified paper audit trail, that is not fully accessible to the disabled as required by federal law under HAVA.

This need not be a choice of paper over the disabled. The disabled community does not object to the use of paper to verify a voter's decision. They insist, however, and I will insist, that if you use paper to verify your votes, then you must also guarantee that the disabled will have the opportunity to verify their votes. For the blind, this means an audio system; for the manually disabled, an accommodation must be made. The Americans with Disabilities Act certainly requires nothing less. As I mentioned a few moments ago, we have accommodated the disabled, who are 20 percent of the population of this country..

It is not just a tiny percentage of the population. Twenty percent of our fellow citizens are disabled and require accommodation in this process. As I mentioned earlier, today we require that a simple thing like an elevator be accessible. The idea that the most fundamental right that we have in this country, the right to vote and to choose our representatives, would not be as accessible as a curb or an elevator ought to offend every single one of us.

The idea that we are going to have a paper audit trail or a paper verification system and disregard 20 percent of our fellow citizens ought to offend every citizen of this country, and it certainly does this one. And so, I will insist that as we go forward here, any effort to make this a one size fits all solution that discriminates against people who are disabled, I will vehemently, vehemently oppose, and I hope others would join me in that effort.

My position is clear, consistent and unambiguous: I support voter verification, including voter verified audit trails, so long as all aspects of the voting system, including the permanent audit record, are accessible to voters with disabilities and language minorities. The ATM machine is cited all the time. You can go to an ATM machine, and you get an audio system that will tell you what transaction you have just engaged in, as well as having a paper trail, if you will.

But I will continue to oppose reducing individual voter verification to an inaccessible paper-only method as the solution. We have come too far in this country to disregard the needs of millions of our fellow citizens. They should be able to cast a vote private and independently.

On March 3rd of last year, the bipartisan, bicameral authors of HAVA issued a joint "Dear Colleague" advising Members of Congress of these very concerns. Let me quote from that letter –

“...the proposals requiring a voter-verified paper record would force voters with disabilities to go back to using ballots that provide neither privacy nor independence, thereby subverting a hallmark of the HAVA legislation.”

I ask unanimous consent that a copy of the letter dated March 3, 2004 signed by Senator McConnell, Congressman Ney, Congressman Hoyer, and myself, be included in the hearing record.

I am not opposed to states requiring a voter verified audit trail – the provision I authored in HAVA already requires that states establish a permanent paper record with audit capacity for election systems.

But I am opposed to federally mandating that states implement voter verification by means of a paper record only. Regrettably, that is what the legislation proposed last year required, and that is what some legislation reintroduced this Congress requires. Such a requirement would discriminate against the disabled and those who are language minorities and the illiterate.

Technology has not yet produced a paper record that is fully accessible to everyone, and as long as I am a member of this body, I will oppose any attempt to reduce voter verification to a piece of paper that is inaccessible to the disability community.

The Committee will hear from witnesses today who oppose adding a new federal mandate on voter-verified paper audit trails. While I recognize that some 22 states, including my own state of Connecticut, are moving ahead on their own, I share the concerns that Congress not act too hastily to impose a one-size-fits-all solution that is largely untested.

Technology may eventually provide us an answer. I believe it will. But today, voter verification must include alternatives to paper and systems that do not require the disabled to seek assistance in either the casting or verification of their ballot. States that require otherwise risk being in violation of federal law.

The provisions of HAVA are very clear on this point. Section 301 of HAVA requires that the voting system be accessible for individuals with disabilities, including nonvisual access for the blind and visually impaired, in a manner that provides the same opportunity for access and participation as other voters -- and here I quote: "Including privacy and independence."

What that means is that any state that chooses to add a voter verified audit trail as part of their voting system must make that audit trail accessible to the disabled in a manner that allows the disabled to verify their choices in an independent and private manner.

The blind cannot verify their choices by means of a piece of paper alone in a manner that is either independent or private. Nor can an individual who has a mobility disability, such as hand limitations, verify a piece of paper alone, if that individual is required to pick up and handle the paper.

Consequently, a state that chooses to require a voter verified paper audit trail must also provide a means for the disabled to privately and independently access and verify that paper.

For the blind and visually impaired, that may mean adding an audio or non-visual system that can “read” the paper audit trail back to the voter. In the case of an individual who has hand limitations, the system would have to provide a means of accessing the paper audit trail without having to actually pick up the paper or manipulate it.

Technology affords us the opportunity to make voting accessible to all persons with disabilities, and HAVA establishes the civil right of all disabled individuals to cast a ballot in a private and independent manner.

Congress has appropriated \$3 billion to date to assist the states in implementing disabled accessible systems. The states simply have no excuse for purchasing voting systems that are not accessible to the disabled.

The language of HAVA is clear: states may choose whatever voting system they please to comply with the law. But, what is equally clear is that whatever system a state chooses to implement, all components of that voting system, including any audit trail information, under section 301(b) of the law, must meet the requirements of HAVA, specifically, the disabled and language minority accessibility requirements.

Our distinguished panel of witnesses today has broad experience in election administration procedures, including the verification of ballots and the mechanics of making voting systems accessible and usable for all voters. I would ask that our witnesses today comment on a full range of options for achieving uniform and nondiscriminatory voter verification.

I thank the Chairman for holding this hearing. I thank Senator Dayton for asking the Chairman to hold a hearing on voter verification systems. I look forward to hearing our witnesses. This is an important topic. The 2000 and 2004 federal elections raised a number of other vital issues that still need to be addressed, and I would encourage our distinguished Chairman and the Committee to hold some additional hearings to review other proposals for building on HAVA to ensure the integrity of federal elections by guaranteeing that every eligible voter has an equal opportunity to cast a vote and have that vote counted.

I would just mention in closing, when I raised and discussed this issue over the last year or so with people who have talked on this subject, on several occasions I have heard people say—you know, it is just tough, maybe the disabled are just going to have to be inconvenienced a bit. I am using the words, quoting by the way, “inconvenienced a little bit.” Anyone who has had any contact with people knows what it means to be inconvenienced if you are disabled.

We have fought very hard to pass a very good bill, a bipartisan bill, a strong bill. For the very first time in our 218 year history, the federal government has gotten involved in the conduct of federal elections, other than the Voting Rights Act back in 1964 which said what could not be done with poll taxes and literacy tests. With HAVA, we said what you must do as well, and that is to make elections fair and equal and accessible and set up better systems as a result of the debacle we saw in 2000 and to some degree in 2004. It is not a perfect piece of legislation, but it is the Marbury v. Madison of the federal government being involved in federal elections. We have a lot more to do to get this right, but I hope we can resolve this matter between paper and the disabled community and not end up having a battle in this country that need not be waged.

Thank you, Mr. Chairman.